UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

In re

Case No. 03-12442-DHW
Chapter 7

WYMAN ELLISON FRALEY and
VICTORIA LYNN FRALEY,

Debtors.

MEMORANDUM OPINION

Before the court is Cincinnati Insurance Company's (hereinafter "Cincinnati") objection to the chapter 7 trustee's proposed abandonment of the estate's claim against Cincinnati. The matter was set for hearing in Dothan, Alabama on September 21, 2005. Appearing at the hearing were the trustee, William C. Carn, III, and Cincinnati's attorney, Lawrence B. Voit.

Jurisdiction

The court's jurisdiction derives from 28 U.S.C. § 1334 and from the United States District Court for this district's general order referring all title 11 matters to this court. Further, because the abandonment of estate property concerns the administration of the estate and impacts upon the liquidation of estate property, this is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O) thereby extending this court's jurisdiction to the entry of a final judgment or order.

Uncontested Facts

Cincinnati insured the debtors' home. Prior to their filing for bankruptcy relief, the debtors' home allegedly suffered water damage. The debtors made a claim for these damages, but Cincinnati allegedly denied their claim.

The debtors filed suit against Cincinnati in the Circuit Court of

Houston County, Alabama alleging claims for breach of contract and bad faith. Cincinnati removed the action to the United States District Court for the Middle District of Alabama where it remains pending. Cincinnati has moved the District Court to dismiss the suit alleging that the trustee, not the debtors, is the real party in interest.

Cincinnati has offered $2,000 to the trustee to settle the estate's water damage related claims. However, the trustee has declined Cincinnati's offer of settlement and has determined not to pursue the claim against Cincinnati on behalf of the bankruptcy estate. Rather, trustee has proposed to abandon these claims to the debtors.

Contentions of the Trustee

First, trustee notes that there are two mortgages on the debtors' home. Chase Manhattan Mortgage Corp. and AmSouth Bank hold the first and second mortgages, respectively. The trustee contends that these mortgagees are named loss payees under the debtors' insurance policy with Cincinnati, hence the mortgagees have a lien on the proffered settlement proceeds. In short, acceptance of the settlement offer would produce no funds for distribution to general, unsecured creditors and, therefore, would be of no benefit to the estate.

Second, the trustee maintains that the alleged water damage to the debtors' home initially occurred prepetition but continued beyond the date of the debtors' bankruptcy. Therefore, the bankruptcy estate would be entitled only to the damages occurring prior to bankruptcy, and according to the trustee, allocation of the damages would require further litigation.

Third, the trustee describes Cincinnati's $2,000 offer of settlement as *de minimis*. The small amount, he contends, would be burdensome to administer.

Finally, trustee asserts that Cincinnati lacks standing to object to

his proposed abandonment of the estate's water damage claim.[1]

Contentions of Cincinnati

Cincinnati contends that trustee should only be permitted to abandon assets that are of little or no value, but that abandonment should not be permitted in the case *sub judice* because the offer of settlement is a tangible benefit to the estate.

Cincinnati counters trustee's argument that settlement of the claim would require further litigation to determine the allocation of prepetition and postpetition damages. It contends that the settlement proposed here is a *pro tanto* settlement of solely the estate's claims against Cincinnati. The debtors could proceed with their claims independent of the trustee. Hence, the debtors would have no claim against these settlement proceeds because they would relate exclusively to prepetition water damage related claims belonging exclusively to the bankruptcy estate.

Further, Cincinnati disputes that the $2,000 offer of settlement is *de minimis* because the trustee has already marshaled other assets of this estate. As a result, full administration of the estate, including a distribution to creditors, is inevitable. The import, here, is that if trustee is already bound to fully administer this estate, no matter the $2000 settlement proceeds, the inclusion of the settlement proceeds will not prolong, complicate, or add expense to the estate's administration.

Finally, Cincinnati disputes that the home mortgagees would have any claim on the settlement proceeds as a result of the loss payee

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[1] Trustee has advanced other grounds in support of his decision to abandon the claims against Cincinnati. These grounds, however, center upon the justification for abandonment of the realty due to its lack of equity or due to potential liability due to latent defects. These arguments are not germane to trustee's abandonment of the breach of contract and bad faith claims against Cincinnati.

clause in the insurance policy. It notes that both mortgagees have moved for and obtained relief from stay to permit them to enforce their respective liens against the debtors' home. Both mortgagees have now foreclosed and neither have filed claims against the bankruptcy estate.[2] This, according to Cincinnati precludes the mortgagees' claim on the settlement proceeds.

Conclusions of Law

11 U.S.C. § 554(a) allows the trustee to "abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

Fed. R. Bankr. Proc. 6007 establishes the procedure for the trustee to abandon property. The trustee must give notice of the proposed abandonment to the bankruptcy administrator, "all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code." Fed. R. Bankr. Proc. 6007(a). A party in interest has 15 days from the mailing of the notice to file an objection.

If a party in interest files an objection, the court sets a hearing. Fed. R. Bankr. Proc. 6007(a). If no objection is filed, the abandonment is effective without an order from the court. 10 Lawrence P. King, *Collier on Bankruptcy* ¶ 6007.02[1][a], at 6007-4 (15th ed. 2005). Therefore, Rule 6007 requires a hearing only if an objection is timely filed by a party in interest.

Obviously, all creditors, indenture trustees, and committees elected pursuant to § 705 are parties in interest with standing to object to a trustee's notice of proposed abandonment.

In the case *sub judice*, Cincinnati filed the sole objection to the trustee's notice of the proposed abandonment of the cause of action

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[2] The claims bar date in this case was August 31, 2005. *See* Doc. # 137.

against Cincinnati.

However, Cincinnati is not a creditor of the estate. Because Cincinnati is not a creditor of the estate, any recovery by the trustee will not inure to the benefit of Cincinnati. Does Cincinnati have standing to object?

> Standing has three constitutional elements. A plaintiff seeking to invoke a federal court's jurisdiction must show:
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> (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Koziara v. City of Casselberry, 392 F.3d 1302, 1304 (11th Cir. 2004).

Does Cincinnati have an "injury in fact?" How will Cincinnati be affected by the abandonment? If the trustee abandons the prepetition water damage claim, then the debtors will own the claim. If the trustee does not abandon the claim, then the trustee continues to own the claim. Under either scenario, Cincinnati remains the defendant; its interest does not change.

Apparently, Cincinnati would rather defend against the trustee than the debtors. Perhaps Cincinnati believes that the trustee is a more likely candidate for settlement. Whatever its reasoning, Cincinnati's objection appears to be nothing more than an attempt to gain a perceived strategic advantage in the litigation.

The loss of a strategic litigation advantage is not an "injury in fact" that is "concrete and particularized and actual or imminent, not conjectural or hypothetical." *Koziara,* 392 F.3d at 1304. Therefore, Cincinnati is not "materially and adversely affected" by the

abandonment and lacks standing to object. *Kittay v. Dutch Inn of Orlando, Ltd. (In re Dutch Inn of Orlando, Ltd.)*, 614 F.2d 506, 508 (5th Cir. 1980); *Morlan v. Universal Guar. Life Ins. Co.*, 298 F.3d 609 (7th Cir. 2002); *cf. Anderson v. Simchon (In re Southern Textile Knitters, Inc.)*, 1999 WL 33485638, 4 (Bankr. D. S.C. 1999) (direct pecuniary interest necessary to establish standing); *In re Drost*, 228 B.R. 208 (Bankr. N.D. Ind. 1998) (debtor had no standing to object to abandonment because of the lack of adverse affect on the debtor's pecuniary interests).

If Cincinnati were also a creditor of the estate, Cincinnati would have a stake in the recovery and standing to object to the abandonment. *In re Thompson*, 193 B.R. 83, 84 (D.D.C. 1994); *In re Sullivan & Lodge, Inc.*, 2003 WL 22037724 (N.D. Cal. 2003); *Cuda v. Nigro (In re Northview Motors, Inc.)*, 202 B.R. 389 (Bankr. W.D. Pa. 1996).

For the above reasons, the court concludes that Cincinnati is not a "party in interest" with standing to object to the trustee's notice of abandonment. Therefore, the objection will be overruled.

This ruling is dispositive of the other contentions advanced by the parties. A separate order will enter consistent with this memorandum.

Done this 17th day of October, 2005.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Lawrence B. Voit, Attorney for Cincinnati Ins. Co.
William C. Carn, III, Trustee